

Decision **DRAFT DECISION OF ALJ COOKE** (Mailed 3/13/2003)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U 902-E) for a Certificate Of Public Convenience & Necessity Valley-Rainbow 500kV Inter-Connect Project.

Application 01-03-036  
(Filed March 23, 2001)

**DECISION DENYING PETITION TO MODIFY**

On January 23, 2003, San Diego Gas & Electric Company (SDG&E) filed a petition to modify Decision (D.) 02-12-066, which denied without prejudice SDG&E's request for a certificate of public convenience and necessity for a 500 kilovolt transmission project known as Valley-Rainbow. D.02-12-066 found that based on the evidence, SDG&E would not experience a capacity deficiency within the adopted five-year planning horizon for the project. Based on the record, the Commission concluded that SDG&E should have sufficient capacity to reliably meet its needs through at least 2008 or 2009. (*See* D.02-12-066, p.57.) However, the decision does not conclude when SDG&E will experience a capacity deficiency after the adopted five-year planning horizon ends.

In its petition, SDG&E asks the Commission to reverse its conclusion in D.02-12-066 regarding the need for a project within the five year planning horizon based on "new evidence" it presents. SDG&E seeks to have the Commission rely on SDG&E's interpretation of that "evidence" without the opportunity for cross-examination or the ability of other parties to present evidence that might contradict SDG&E's interpretation. In other words, SDG&E

seeks to have the Commission reopen the record to accept SDG&E's newly proffered evidence without providing equal opportunity for other parties to do the same. In this case, the Commission specifically provided that if SDG&E identified a reliability or economic need for a similar transmission project in the future, it should file a new application. (*See* D.02-12-066, p.70.)

In light of this direction, we deny the petition to modify without assessing the merits of the “new evidence” proffered by SDG&E or other parties.<sup>1</sup> We agree with Office of Ratepayer Advocates (ORA) that “if SDG&E wants to make an evidentiary showing about new events that it alleges make the project needed today, then its proper course is to file a new application “(*see* ORA Response, p.2) that describes its proposed project, location and routing, costs, and alternatives.

#### **Comments on Draft Decision**

The draft decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed by SDG&E on April 2, 2003, and reply comments were filed on April 7, 2003 by Save Southwest Riverside County, City of Temecula, and Pechanga Development Corporation (collectively, SSRC *et al.*) and ORA.

SDG&E argues that its due process rights are denied by this draft decision. Although SDG&E is correct that the Commission may consider a petition for modification based on new facts, that decision is discretionary on the part of the Commission. In this case, the Commission clearly stated in D.02-12-066, that

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<sup>1</sup> In response to SDG&E's petition, parties did submit contrary “evidence” which demonstrates that acceptance of SDG&E's proffered information is not without controversy.

SDG&E should file a new application if it identified the need for a similar project. A new application allows for a full exploration of any relevant new evidence regarding need and has the added benefit of requiring SDG&E to set forth the proposed project (including the route) that it proposes be constructed.<sup>2</sup> Therefore, although we could consider the new evidence SDG&E has presented in its petition, we chose not to do so.

SDG&E also took issue with the language summarizing the findings in D.02-12-066 regarding when SDG&E might experience a capacity deficiency. As SSRC *et al.* point out in their reply comments, “the Commission applied reasonably foreseeable but conservative supply and demand forecasts; and concluded that any capacity deficiency experienced by SDG&E would not occur until 2008, well outside the applicable planning horizon.” (SSRC *et al.* Reply Comments, p. 4.) For this reason, we make no change to the language of the decision.

### **Assignment of Proceeding**

Susan Kennedy is the Assigned Commissioner and Michelle Cooke is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. In D.02-12-066, the Commission directed SDG&E to file a new application if new information indicated the need for a project.
2. SDG&E seeks to introduce new evidence into the record without it being tested by cross-examination or the opportunity for other parties to present evidence.

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<sup>2</sup> In filings made just prior to the adoption of D.02-12-066, SDG&E conceded that its originally proposed project was not feasible.

**Conclusions of Law**

1. Evaluation of potential new “evidence” requires reopening the record and holding additional evidentiary hearings.
2. SDG&E’s proper remedy is to file a new application as described in D.02-12-066.
3. The petition to modify should be denied.

**O R D E R**

Therefore, **IT IS ORDERED** that San Diego Gas & Electric Company’s petition for modification is denied.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.